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**Benton County
WATER CONSERVANCY BOARD**

BENT-13-02

Record of Decision

Applicant: Zirkle Fruit Company Application Number: CG4-24758(C)P


The attached Report of Examination has been reviewed by the BCWCB members; and this Record of Decision was made at an open public meeting of the Benton County Water Conservancy Board held on October 11, 2013, with any changes to ROE/ROD based on information received from the applicant and WADOE staff.

(X) Approval:

The Benton County Water Conservancy Board hereby **grants** conditional approval for the water right transfer described and conditioned within the report of examination and submits this record of decision and report of examination to the Department of Ecology for final review or consideration.

() Denial:

The Benton County Water Conservancy Board hereby **denies** conditional approval for the water right transfer as described within the report of examination and submits this record of decision to the Department of Ecology for final review or consideration.

Signed Original  Date: 10/11/2013
Darryll Olsen, Ph.D., Chairman
Benton County Water Conservancy Board

Approves
Denies
Recused
Abstains
Excused Absence

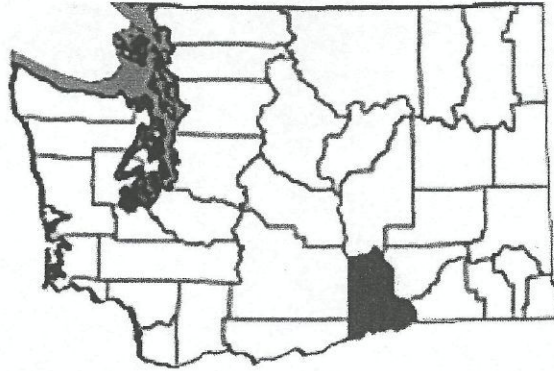
Signed Original  Date: 10/11/2013
Scott Revell, Board Member
Benton County Water Conservancy Board

Approves
Denies
Recused
Abstains
Excused Absence

Signed Original  Date: 10/11/2013
Matt Berg, Treasurer
Benton County Water Conservancy Board

Approves
Denies
Recused
Abstains
Excused Absence

Final ROE/ROD Mailed to the Department of Ecology, Regional Office of Ecology, via tracked mail, and other interested parties on or before 10/25/2013.



BENTON COUNTY WATER CONSERVANCY BOARD

Application/Review for Change/Transfer

OF A RIGHT TO THE BENEFICIAL USE OF THE PUBLIC WATERS OF
THE STATE OF WASHINGTON



Report of Examination

Prepared by Members of the Benton County Water Conservancy Board

Surface Water		Ground Water X	
DATE APPLICATION RECEIVED (March 2013)	WATER RIGHT DOCUMENT NUMBER CG4-24758(C)P Per Assignment	WATER RIGHT PRIORITY DATE February 8, 1977	BOARD-ASSIGNED CHANGE APPLICATION NUMBER BENT-13-02
NAME Attention: Zirkle Fruit Company			
ADDRESS (STREET)	(CITY)	(STATE)	(ZIP CODE)
P.O. Box 190	Selah	WA	99320

Changes Proposed: ☐ Change purpose ☒ Add purpose ☒ Add irrigated acres ☐ Add point of diversion/withdrawal
☒ Other (Temporary, Trust, Interties, etc.)

SEPA

The board has reviewed the provisions of the State Environmental Policy Act of 1971, Chapter 43.21C RCW and the SEPA rules, chapter 197-11 WAC and has determined the application is: ☒ Exempt (water right) ☐ Not exempt (proposed project)

The direct water right change/transfer described herein is exempt from SEPA review, as the water amount involved is under the SEPA threshold criteria (2,250 gpm). The net incremental, affected irrigation acres is approximately 44%, or a net change (expansion) from the existing project of about 1,050 gpm being allocated to a new acres allowed within the existing place of use.

BACKGROUND AND DECISION SUMMARY

Prepared by Members of the Benton County Water Conservancy Board

Existing Water Right

MAXIMUM CUB FT/ SECOND	MAXIMUM GAL/MINUTE 2,386 gpm	MAXIMUM ACRE-FT/YR 969	TYPE OF USE, PERIOD OF USE Irrigation of 243 acres, March 1 to November 1				
SOURCE Groundwater-Wanapum Basalt Formation			TRIBUTARY OF (IF SURFACE WATER)				
AT A POINT LOCATED: PARCEL NO. (See Attachments)	¼	¼	SECTION	TOWNSHIP N.	RANGE	WRIA	COUNTY.
Diversion Point(s):	NW	SW	3	5N	28 EWM		Benton
(and as described on certificate).	SE	NE	3	5N	28 EWM		
	SW	SW	35	6N	28 EWM		
	SE	SE	35	6N	28EWM		
And As Stated on Existing Permit.							
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED							
As stated on Existing Permit.							
And All within: S1/2 of S1/2 of Section 35, EXCEPT West 100 feet of South 100 feet of SW1/4 of Section 35, T.6N, R.28 EWM. That portion of Section 3 lying North of relocated right of way of Spokane, Portland, and Seattle Railway Company, EXCEPT portion conveyed to USA by instrument recorded August 13, 1949, under Auditor's File NO. 239605, all within T.5N, R.28 EWM.							

Proposed Use Under Change Application

MAXIMUM CUB FT/ SECOND	MAXIMUM GAL/MINUTE 2,386 gpm Total 1,724-Irrigation	MAXIMUM ACRE-FT/YR 700-Irrigation 269-Trust Program Enrollment*	TYPE OF USE, PERIOD OF USE Irrigation of up to 350 acres, February 15 to November 30 Trust Water Rights Program, Year-Round.				
SOURCE Groundwater-Wanapum Basalt Formation			TRIBUTARY OF (IF SURFACE WATER)				
AT A POINT LOCATED: PARCEL NO. (See Attachments)	¼	¼	SECTION	TOWNSHIP N.	RANGE	WRIA	COUNTY.
Diversion Point(s):	NW	SW	3	5N	28 EWM		Benton
(and as described on certificate).	SE	NE	3	5N	28 EWM		
	SW	SW	35	6N	28 EWM		
	SE	SE	35	6N	28EWM		
And As Stated on Existing Permit.							
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED							
As stated on Existing Permit.							
And All within: S1/2 of S1/2 of Section 35, EXCEPT West 100 feet of South 100 feet of SW1/4 of Section 35, T.6N, R.28 EWM. That portion of Section 3 lying North of relocated right of way of Spokane, Portland, and Seattle Railway Company, EXCEPT portion conveyed to USA by instrument recorded August 13, 1949, under Auditor's File NO. 239605, all within T.5N, R.28 EWM.							
*Trust Program enrollment is temporary; may be withdrawn from Trust with prior year notification to Ecology.							

Water Board Decision

MAXIMUM CUB FT/ SECOND	MAXIMUM GAL/MINUTE 2,386 gpm Total 1,724 Irrigation 662 Trust Program	MAXIMUM ACRE-FT/YR 700-Irrigation 189-Trust Program Enrollment*	TYPE OF USE, PERIOD OF USE Irrigation of up to 350 acres, February 15 to November 30 Trust Water Rights Program, Year-Round.				
SOURCE Groundwater-Wanapum Basalt Formation			TRIBUTARY OF (IF SURFACE WATER)				
AT A POINT LOCATED: PARCEL NO. (See Attachments) Diversion Point(s): (and as described on certificate).	¼ NW SE SW SE	¼ SW NE SW SE	SECTION 3 3 35 35	TOWNSHIP N. 5N 5N 6N 6N	RANGE 28 EWM 28 EWM 28 EWM 28EWM	WRIA	COUNTY. Benton
And As Stated on Existing Permit.							
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED							
As stated on Existing Permit.							
And All within: S1/2 of S1/2 of Section 35, EXCEPT West 100 feet of South 100 feet of SW1/4 of Section 35, T.6N, R.28 EWM. That portion of Section 3 lying North of relocated right of way of Spokane, Portland, and Seattle Railway Company, EXCEPT portion conveyed to USA by instrument recorded August 13, 1949, under Auditor's File NO. 239605, all within T.5N, R.28 EWM.							
*Trust Program enrollment is temporary; may be withdrawn from Trust with prior year notification to Ecology.							

DESCRIPTION OF PROPOSED WORKS

The existing permit is being used for irrigation of hay and row crops. Irrigation will continue with wine grape vineyards.

Existing water delivery infrastructure will be used for primary pumping and mainlines.

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE: Immediately	COMPLETE PROJECT BY THIS DATE: By January 1, 2017	COMPLETE CHANGE AND PUT WATER TO FULL USE BY THIS DATE: By January 1, 2018
--------------------------------------------	------------------------------------------------------	-------------------------------------------------------------------------------

NOTE: The Water Board establishes the development schedule, as required under RCW 90.80.070, 90.80.080, and WAC 173-153-130. The schedule may be extended by WADOE if diligence is demonstrated in the completion of this project.

REPORT OF EXAMINATION

Prepared by Members of the Benton County Water Conservancy Board

BACKGROUND

A change/transfer application for permit CG4-24758(C)P was received and accepted by the Water Board in March 2013, with further information provided during April-June, 2013, such as right assignment information and water use history.

Beneficial use of the existing water right is based on previous use history documented by the applicant and Water Board.

The water right has received a previous change/transfer and assignment to another party now farming the existing place of use. The intent is to shift water use from row crop/hay production to wine grape vineyards.

The existing water right is in good standing.

Attributes of the water right as currently documented:

Name on certificate, claim, permit: Zirkle Fruit Company via recent assignment.

Water right document number: G4-24758(C)P, per assignment.

As modified by permit change number: CG4-24758(C)P.

Priority date, first use: February 8, 1977.

Water quantities: Qi: 2,386 gpm.

Qa: 969 acre-ft./year.

Source: Groundwater (Wanapum basalt formation).

Point of diversion/withdrawal: See above and attachments

Purpose of use: Irrigation.

Period of use: Seasonal, March 1 to November 1.

Place of use: See above and attachments

Existing provisions: See attached permit.

Tentative determination of the water right:

See Water Board's Decision above; water right is in permit stage (perfected portion), in good standing.

History of water use:

As assigned, the water right permit has been put to full beneficial use (perfected).

Previous changes:

The original permit has received both previous change/transfers, and the current permit has been assigned to a new owner.

SEPA:

As noted above, the water right change request is exempt, under the categorical exemption threshold criteria (2,250 gpm). The net incremental, affected irrigation acres is approximately 44%, or a net change (expansion) from the existing project of about 1,050 gpm being allocated to new acres within the allowed place of use.

COMMENT AND PROTESTS

Public notification for the applicant's request was filed in the Tri-City Herald. A copy is provided in the Public Notice attachments. The WADOE/Water Board did not receive a protest notice, or comments, from a third party. The application has been distributed to several state resources agencies, tribes, and interested parties. No comments have been received from these parties concerning the application.

Issues Raised by WADOE:

The Water Board has provided the WADOE CRO with the change/transfer application and public notice, and a Water Board representative has discussed the change request with CRO-WADOE staff, and requested an explicit identification of any issues of concern related to the change request or the Water Board's preparation of the ROE/ROD. No specific concerns were raised, and staff are familiar with the water right from an earlier change/transfer.

Protests:

Date: None Received.

This was recognized by the board as a ☐ Protest ☐ Comment

Name/address of protestor/commenter:

Issue:

Board's analysis:

Other:

INVESTIGATION

The following information was obtained from site inspections, technical reports and documents, research of department records, and discussions with the applicant's technical representative/consultant and other interested parties; as well as discussions with the CRO-WADOE staff.

Proposed project plans and specifications:

As noted above, the applicant will continue to use this water right to provide for irrigation of wine grapes at the existing place of use.

The applicant's intent is to continue the use of the water right per the change/transfer noted above and discussed below.

A. Key Technical Issues—Water Right Review:

This investigation has included several issues:

Tentative Determination:

In order to make a water right change decision, the Water Board must make a tentative determination on the extent and validity of the right. The Water Board has made the tentative determination as displayed upon the first section of this report. There are several circumstances that can cause the Board's tentative determination to differ from the stated extent of the water right within water right documentation. Water right documents attempt to define a

maximum limitation to a water right, rather than the actual extent to which a water right has been developed and maintained through historic beneficial use. Additionally, except for a sufficient cause pursuant to RCW 90.14.140, water rights, in whole or in part, not put to a beneficial use for five consecutive years since 1967 may be subject to relinquishment under Chapter 90.14.130 through 90.14.180 RCW. Water rights may additionally be lost through abandonment. The Board's tentative determination was based upon the following findings.

Water Right Standing:

First, the water right applicant holds a valid water right permit in good standing, and it is on file with the WADOE. The water right is subject to the groundwater code provisions under 90.44, and including RCW 90.14.140, 90.03.615, and 90.03.380. The permit is valid as stands, subject to subsequent change actions by the Water Board and any WADOE administrative changes affecting development.

Second, under the change request, the total amount of water withdrawal from the existing right and proposed change cannot exceed the amount within the currently permitted water right—more specifically, the portion of the right that has been put to actual beneficial use (in permit stage). The change/transfer request must not exceed the existing water right limits; no enlargement of the water right is allowed.

With the reassignment of the water right, the full amount of the allowed irrigated acres has been put to beneficial use—243 acres have been perfected. The Water Board has verified that the existing permit has been put to full beneficial use, and completed an ACQ analysis, as described below.

ACQ Analysis:

The Water Board notes that this request requires no Q_a or Q_i expansion of the water right, as determined by the annual consumptive quantity (ACQ) analysis (see Table 1). The ACQ analysis reveals that:

- The irrigated acres for the existing irrigation use are verified via GPS measurements.
- The crop types and irrigation practices have been provided by the applicant.
- The crop type water duties (and soil profile applications) are confirmed via WSU AgWeatherNet estimates for the McNary site, and per consultations with the Benton Conservation District staff and local irrigators.
- The two-year, peak-year average water use for the 2008-2012 period is 889 acre-ft.

New Irrigation Use:

The applicant intends to spread the existing water use to (up to) 350 acres, using a water duty of about 1.5 acre-ft. per acre, for wine grapes. Thus 700 acre-ft. will be applied to irrigation after the water right change/transfer.

Trust Water Program Donation:

The applicant is temporarily allocating the remainder of their documented consumptive use (perfected permit water) to the Trust Water Rights Program. This action is authorized generally under RCW 90.42, and more specifically under RCW 90.42.040-080. The Water Board confirms that:

- Public notice for the Trust Program donation has been provided for within the applicant's legal notice.
- The water right holder's application for a change/transfer request includes a specific designation of a Trust Program temporary donation, for a portion of the right.
- The applicant's Trust Program donation intent has been published under legal notices (Tri-City Herald); and the application has been distributed to requesting governmental agencies and tribes.
- The consumptive water right portion for the Trust Program donation has been verified via ACQ analysis (see Table 1), and the extent and validity of the water right and Trust Donation are confirmed.

Table 1. Zircke Fruit Annual Consumptive Quantity (ACQ) Analysis for RCW 90.03.380

		2008		With Soil	All Acres	Total	2009		With Soil	All Acres	Total	2010		With Soil	All Acres	Total	2011		With Soil	All Acres	Total	2012		With Soil	All Acres	Total
Field No	Acres	Crop	Inches	Profile-Cover	Inches	Acre-ft.	Crop	Inches	Profile-Cover	Inches	Acre-ft.	Crop	Inches	Profile-Cover	Inches	Acre-ft.	Crop	Inches	Profile-Cover	Inches	Acre-ft.	Crop	Inches	Profile-Cover	Inches	Acre-ft.
		Peas/SC					SWheat-Hay					Field C					SWheat					Pot-WWheat				
M1	48.0	27.9	31.9	1,531.2	127.6	39.0	39.0	1,872.0	156.0	29.4	29.4	1,411.2	117.6	26.0	28.0	1,344.0	112.0	38.0	40.0	1,920.0	160.0					
		Onions					SWheat-Hay					Field C					SWheat									
M2	68.0	24.0	28.0	1,904.0	158.7	39.0	39.0	2,652.0	221.0	29.4	29.4	1,999.2	166.6	26.0	28.0	1,904.0	158.7	38.0	40.0	2,720.0	226.7					
		Sweet C.					SWheat-Hay					Field C					SWheat									
M3	34.0	14.3	18.3	622.2	51.9	39.0	39.0	1,326.0	110.5	29.4	29.4	999.6	83.3	26.0	28.0	952.0	79.3	38.0	40.0	1,360.0	113.3					
		Onions					SWheat-Hay					Field C					SWheat									
M4	30.0	24.0	28.0	840.0	70.0	39.0	39.0	1,170.0	97.5	29.4	29.4	882.0	73.5	26.0	28.0	840.0	70.0	38.0	40.0	1,200.0	100.0					
		Onions					SWheat-Hay					Field C					SWheat									
M5	22.0	24.0	28.0	616.0	51.3	39.0	39.0	858.0	71.5	29.4	29.4	646.8	53.9	26.0	28.0	616.0	51.3	38.0	40.0	880.0	73.3					
		Sweet C.					SWheat-Hay					Field C					SWheat									
M6	26.0	14.3	18.3	475.8	39.7	39.0	39.0	1,014.0	84.5	29.4	29.4	764.4	63.7	26.0	28.0	728.0	60.7	38.0	40.0	1,040.0	86.7					
		Onions					SWheat-Hay					Field C					SWheat									
M7	15.0	24.0	28.0	420.0	35.0	39.0	39.0	585.0	48.8	29.4	29.4	441.0	36.8	26.0	28.0	420.0	35.0	38.0	40.0	600.0	50.0					
Total	243.0				534.1				789.8				595.4				567.0									810.0
Total with 90% Irrigation Efficiency:						593.4			877.5				661.5				630.0									900.0
																						Two-Year, Peak-Year Average:				889
																						Acre-ft. Per Acre Average:				3.7

Source: WSU AGWeatherNet crop duties for the McNary site, 2008-2012; and Washington Irrigation Guide.

Personal communications with farm/irrigation managers, 2013.

Personal communications with Columbia-Snake River Irrigators Association members-McNary/John Day Pool crop water duties, 2013.

Personal communications with Benton County Conservation District staff--McNary-John Day Pool crop water duties, 2013.

NOTE: Soil profile and cover crop water applications range between 2-4 inches per late fall-early spring period depending on crop rotations and conditions.

ACQ: ACQ analysis indicates that the two-year, peak-year average for the water right is 888 acre-ft. This amounts to an 80 acre-ft. reduction from the original nameplate.

ACQ analysis based on Benton-Franklin County Water Conservancy Boards ACQ Analysis Methodology, 2004.

- There is no impairment to other water right holders per this Trust Program donation.

Given the above factors, the Water Board approves a temporary, Trust Water Right Program donation for a portion of the water right, not to exceed 189 acre-ft. Total cfs for the donation shall not exceed 2,386 gpm, in combination with the allowed irrigation use (Trust Program and irrigation use gpm is limited to 2,386 gpm).

Change to Period of Use:

The applicant will be extending the period of use from March 1-November 1 to February 15-November 30. This request has been evaluated by the Water Board, including discussions with the applicant's technical consultant. The extension of seasonal period use will have no measurable impact on existing groundwater water use conditions, will not expand the Qa or Qi use of the water right (perfected use), and create no impairment to other water right holders. Therefore, the Water Board approves the seasonal time of use extension.

Tentative Determination Finding:

And third, based on the above information and analyses (and Attachments), the Water Board has determined that the full amount of the said water right for change/transfer is presented within the above "Board Decision" summary, and should be the amount not exceeded by the applicant within the proof of appropriation filing and within the superseding permit/certificate issued by WADOE.

Hydrologic, and other technical investigations:

First, the change/transfer relies on the exiting points of withdrawal, so the requested change/transfer will divert water from the same body of water (management area) as that allowed under the existing water right.

Second, the change request cannot create impairment. The Water Board has reviewed with the applicant, and with a qualified professional engineer, information on potential impairment, along with the WADOE point of diversion and water right records, and concludes that impairment is not an issue for this change request.

Third, the point of withdrawal is consistent with the impairment standards under RCW 90.03.380, as a perfected water right (permit).

Fourth, it further is noted that:

- 1) For this immediate area, no record/affirmation of impairment has been noted by the Water Board or WADOE.
- 2) The Water Board has required the applicant to review impairment issues for the applicant's change request. This review indicates that the change action will not impair other water rights.
- 3) Based on the public notice of this change request, the Water Board has received no impairment issue comments from other existing water right holders, including those who withdraw water from nearby sites.

And Fourth, the change will not increase water use relative to the existing allowed use, create impairment, or detrimental environmental impacts.

Given the above review, the Water Board concludes that the proposed action will not create impairment to other water rights per the provisions and conditions established under the existing certificate and the conditions provided within this ROE/ROD.

B. Water Right Adjudication Process

Water right adjudication does not affect this application.

C. Verification of Existing Water Right:

As noted above, the existing water use retains a permit of water right granted by the Washington State Dept. of Ecology. The Water Board has reviewed the water right documentation, reviewed the applicant's technical information concerning the water right, is familiar with the existing water use and land operations, and has conducted its own review of the water right relative to change/transfer conditions as discussed above. It is concluded that the water right is in good standing, and subject to the conditions contained within this ROE/ROD for change/transfer.

D. Field Examination:

The field examination was conducted by Dr. Darryll Olsen, Chairman, BCWCB, with on-site visits during the months of May and June 2013. Further, the Water Board is generally familiar with this area from a previous change/transfer decision.

The field examination confirmed the information within the application request and technical information, which is more fully elaborated upon in this Report of Examination (and attachments).

The field examination consisted of viewing the existing/proposed water use sites, existing pumping site, and the surrounding area. A visual examination of the site water use area was conducted, along with a review of the applicant's maps. In essence, the field investigations confirmed information provided by the applicant through personal communications and supporting application materials.

E. Technical Information, Investigations, or Reports Reviewed:

The Water Board has reviewed the applicant's WADOE file and records contained therein, including any reports/comments submitted by WADOE staff, and pertinent WADOE water right records.

The applicant has provided technical information, personal communications, and technical references requested by the Water Board, including data to verify the existing and proposed use areas; and the applicant has communicated extensively with individual Water Board members to answer specific questions about the change/transfer request. The Water Board has conducted a field examination to verify the information contained within the applicant's current water rights and supporting technical information. The Water Board has requested and received supplemental information from the applicant and has discussed future water usage needs with the applicant.

The Water Board has reviewed the standing of the water right, documentation provided by the water right holder concerning land holdings and management, and aerial photography for the existing and proposed water right place of use and purpose.

The Water Board has forwarded copies of the application change/transfer request and public notice to the state Dept. of Fish & Wildlife, the Dept. of Health, the Tribes, and to all parties requesting such copies. No comments were received by these parties during the formal, and informal, public comment period for the change/transfer application.

The Water Board has reviewed the applicant's SEPA compliance needs.

F. Associated Rights and Uses:

The subject permit is being beneficially used independently within the authorized place of use. Other water rights are not affected by the proposed change/transfer.

The Water Board has identified nearby water rights adjacent to the existing and proposed place of use, as indicated within the WRATS database; and identified nearby wells and surface water pump stations, as indicated on the WADOE website and data bases.

G. Review of Potential Impairment:

Because the proposed action will not increase the existing permitted water use (with change modifications), or increase the water amount put to allowed beneficial use, or likely affect other existing water rights (or applications for new water rights), no impairment is perceptible. The applicant's technical information has been reviewed on water use within the same body of water for management purposes and potential impairment.

The proposed change/transfer will be beneficial in the conservation and management of water resources from existing practices for the following reasons: 1) there will be no increase in diversion/withdrawal on an annual basis after the change/transfer, compared to existing permitted withdrawals; and 2) better controls and monitoring on the quantity of water pumped will help ensure that the authorized quantity is not exceeded, as required under a metering and development plan.

The Water Board has published public notice of the proposed action and reviewed any potential technical issues concerning impairment.

Existing water rights located within the nearby area--within the same section and adjacent sections--were noted according to information contained within the WADOE WRATS data base system and visual inspection, and ongoing Water Board review within this area.

As noted above based on the applicant's technical information and the Water Board's review, it is concluded that no impairment would occur related to the water right change/transfer request.

The field investigation revealed that the applicant's request for change/transfer is consistent with existing land and water use practices within the immediate area, reflecting the development of and consistency with the Benton County Comprehensive Land Use Plan.

The change/transfer request is consistent with net beneficial use and return flow considerations contained in RCW 90.03.380 and other applicable statutes. The change will not increase water diversions or net depletions from the surface water source. More specifically, the subject application for change is consistent with public policy objectives of the state to provide for efficient use of water resources, to encourage supply of new or expanding uses through change/transfer of existing water rights, and to provide greater operational control to water managers.

Given the fact that no increase in water withdrawal from the existing ground/surface water management source will occur relative to that permitted and allowed for beneficial use, there is no reason to expect any impairments to other water sources, consistent with the conditions and provisions provided under the existing water right modification order granted by the WADOE. Also, because the change/transfer proposed by the applicant does not affect withdrawals from new water sources—without regulation--or increase existing allowed net annual withdrawals/diversions from that currently permitted, the change/transfer request does not affect local conditions surrounding the status quo for water use, as permitted by WADOE.

This application decision has no impact on WADOE's existing water right decisions, the condition of local surface water or groundwater resources based on empirical data, or the priority for water rights between junior and senior water right holders within the local area. The Water Board does include conditions within this ROE to ensure that the public interest affecting water use is protected, and that they are consistent with actions that would be pursued by WADOE to avoid future or potential impairment problems or regulation actions.

H. Effect or Benefit to Public Interest:

A Washington State Supreme Court ruling has stated that "...a 'public interest' test is not a proper consideration when Ecology acts on a change application under RCW 90.03.380." PUD No. 1 of Pend Oreille County v. Dep't of Ecology, 70372-8 (2002). By extension, neither does the Water Board have authority to apply a public interest test when evaluating a change in water right request under RCW 90.03.380. This Court decision involved a surface water right.

Nevertheless, the Water Board concludes that the requested change/transfer is not contrary to the public interest governing water use, in complying with groundwater statutes under the RCW 90.44 title.

To the extent review of public interest is applicable, the Water Board finds that the application for change is consistent with public policy objectives of the state to provide for efficient use of water resources, to encourage supply of new or expanding uses through change/transfer of existing water rights, to provide greater operational control to water managers, and to ensure no impairment exists.

Because the proposed action will not increase the existing allowed annual water use, or increase the water put to actual beneficial use, or result in an impact on other existing water rights or applications for new water rights, it does not negatively change the existing status quo for water use impacts. Thus, no impairment is perceived, because of the change/transfer requested in the application. Water use is provided consistent with statutory requirements for beneficial use.

The proposed action does provide for a continuation of the existing beneficial use as stated within the permit of water right, increasing the economic benefits to the state and local area by allowing for continued use and development within the region. The development is taking place in the land-use management area of Benton County.

This action is consistent with the intent of RCW 90.03.380, 90.44.100, and 90.80 (amended May 10, 2001) and other applicable statutes; and it is consistent with Benton County's Comprehensive Land-Use Plan. No impairment is consistent with the public interest; all pertinent water right issues are addressed above; conditions are recommended within this ROE to further protect the public interest consistent with state water law.

The application for change/transfer is consistent with the public interest requirements for beneficial water use, and consistent with the procedural, technical, and legal review requirements by the state.

This action is consistent with the intent of RCW 90.44, 90.03.380, and 90.80 (amended May 10, 2001) and other applicable statutes; and it is consistent with Benton County's Comprehensive Land-Use Plan. No impairment is consistent with the public interest; all pertinent water right issues are addressed above; conditions are recommended within this ROE to further protect the public interest consistent with state water law.

The application for change/transfer is consistent with the public interest requirements for beneficial water use, and consistent with the procedural, technical, and legal review requirements by the state.

I. Consideration of Pending Applications:

The applicant's request will not affect the priority for action on pending new water rights or change/transfer applications filed with the Washington State Department of Ecology, for Benton County. Existing applications for

Benton County were noted (WADOE data base); and no infringement on priority for action for these applications is perceived by (WADOE or the Water Board).

This application review also is consistent with legislative changes made in 2001 affecting the processing of change/transfer applications by the WADOE, as well as the amendments made to RCW 90.03.380.

Public notice has been provided for requesting all water right holders within the Benton County to submit existing or new water right change/transfer applications to the Benton County Water Board—or the WADOE. Applications received by the WADOE or Water Board are first reviewed for accuracy, completeness, and purpose to ensure they fall within the purview of the agency's and Board's jurisdiction. Those that are found wanting are referred back to the applicant for re-submittal or withdrawal. The remaining ones are acted on by a first-come, first-serve basis, taking into account received application's priority date and the technical/legal review requirements thereof.

FINDINGS AND CONCLUSIONS

1. The permit (perfected) of water right and beneficial use are verified.
2. The proposed change/transfer will result in no increase in the annual quantity of water authorized and is consistent with the requirements of RCW 90.03.010, 90.03.380, 90.03.560, 90.14.140, 90.03.615 and other provisions of the groundwater code. The change/transfer request will not increase the allowed water right; the change/transfer will not increase allowed consumptive use from the designated sources, as allowed by the water code per RCW 90.44.
3. There will be no increase in water withdrawal on an annual basis. In addition, continued monitoring of the quantity of water pumped will help ensure that allowed water withdrawals are not exceeded, for the changes requested.
4. The Water Board has determined that impairment is not an issue affecting this change request; the change is within the same body of water for management purposes.
5. Public notice has been provided for the proposed action, and any public concerns have been reviewed by the Water Board. Public notice and application submittal has been forwarded to several state resource agencies/tribes/interested parties for comment; the agencies have provided no direct comments to the application.
6. The Water Board has reviewed the proposed project for SEPA compliance.
7. The proposed action creates no perceived detrimental impacts or impairments to other water right holders or permit applicants; adequate data and information exists to make this determination with confidence.
8. No protests have been made by third parties on this application.
9. The proposed action is consistent with the intent of RCW 90.03.010, 90.03.380, 90.03.560, 90.14.140, 90.03.615, 90.44, and 90.80 (as amended May 10, 2001) and recent case reviews by the Washington State Supreme Court.
10. The proposed action supports the public interest concerned with the direct use of water rights, is consistent with allowed beneficial uses, and is consistent with local area economic development needs and land uses.
11. The Water Board has provided for specific conditions and provisions affecting the use of the water right, as identified below.

RECOMMENDED PROVISIONS

A. Provisions:

The applicant's water right change for new irrigated acres, purpose of use (Trust Program), and extended period of seasonal use is conditioned by the following provisions:

1. The point of withdrawal, place(s) of use, purpose of use, and period of use for the water right are designated in the summary table above (under Water Board Decision).
2. Use of water under this authorization shall be contingent upon the water right holder's utilization of up-to-date water conservation practices, and taking into account cost-effectiveness for operations and economic viability.
3. Per an issued superseding permit/certificate for CG4-24758(C)P, water withdrawal shall not exceed 2,386 gpm (1,724 gpm irrigation use), 700 acre-ft. irrigation, of up to 350 acres, February 15 to November 30; and temporary Trust Water Program donation of 662 gpm, 189 acre-ft. The water right holder may remove all or a portion of the water from the Trust Program with pre-season, advanced (written) notice to Ecology, as part of a new water right change/transfer request.
4. By January 1, 2017, the applicant will notify the Water Resources Program, Central Region Office, WADOE, that project construction is completed, unless further extended for good cause.
5. Proof of appropriation (for actual beneficial use of water) is due to the Water Resources Program, Central Region Office, WADOE by January 1, 2018, unless further extended for good cause.
6. The WADOE shall undertake a proof inspection to certify actual development of the water right amended within this ROE.
7. This authorization to use public waters of the state is classified as a FAMILY FARM PERMIT in accordance with Chapter 90.66 RCW. This means the land being irrigated under this authorization shall comply with the following definition: Family Farm-a geographic area including not more than 6,000 acres of irrigated agricultural lands, whether contiguous or noncontiguous, the controlling interest in which is held by a person having controlling interest in no more than 6,000 acres of irrigated agricultural lands in the state of Washington which are irrigated under water rights acquired after December 8, 1977. Furthermore, the lands being irrigated under this authorization must continue to conform to the definition of Family Farm.
8. All water wells constructed within the state shall meet the "Minimum Standards for Construction and Maintenance of Wells, as provided under RCW 18.104 (Washington Water Well Construction Act of 1971) and Chapter 173-160 WAC Minimum Standards for Construction and Maintenance of Water Wells). Installation and maintenance of an access port as described in Groundwater Bulletin No.1 is required, per WAC 173-160-291(3).

In general, wells shall be located at least 100 feet from sources of Contamination and at least 1,000 feet of the boundary of a solid waste landfill. Any well that is unusable, abandoned, or is an environmental, safety, or public hazard shall be decommissioned.

In addition to the required access port, the applicant shall install and maintain, in operating condition, an airline and pressure gage. The pressure gage shall be equipped with a standard tire valve and placed in a location accessible to Dept. of Ecology personnel. The airline shall extend from land surface to the top of the pump bowls and the total airline length shall be reported to the Dept. of Ecology upon completion of the pump system.

9. An approved measuring device(s) must be installed and maintained for the sources (all points of withdrawal) identified herein in accordance with the rule "Requirements for Measuring and Reporting Water Use," WAC 173-173, describing the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition Ecology for modifications to some of the requirements. Installation, operation and maintenance requirements are enclosed or available from Ecology as a document entitled "Water Measurement Device Installation and Operation Requirements."

10. Water use will be measured and recorded for municipal water supply use. Water use data shall be recorded weekly and shall be submitted annually to Ecology by January 31st of each calendar year.

At a minimum, the following information shall be included with each submittal of water use data: owner, contact name if different, mailing address, daytime phone number, WRIA, Permit or Certificate No., source name, annual quantity used including units, maximum rate of diversion including units, period of use, weekly meter readings including units, and peak flow including units for each month. In the future, Ecology may require additional parameters to be reported or more frequent reporting.

Recorded water use data shall be submitted via internet. To set up an internet reporting account, contact the Central Regional Office. If you do not have internet access, you can still submit hard copies by contacting the Central Region Office for forms to submit your water use data.

11. Department of Ecology personnel, upon presentation of proper credentials and prior notification, shall have access at reasonable times, to project location, and to inspect at reasonable times, records of water use, wells, diversions, measuring devices and associated distribution systems for compliance with the law.

B. Mitigation Requirements:

None are required.

DECISION

Approvals:

The Benton County Water Conservancy Board hereby APPROVES the water right change/transfer described within this record of examination and record of decision, and submits this certificate for conditional approval to the Director of the Washington State Department of Ecology. If the Director takes no action within forty-five days of receipt of this ROE/ROD, then the Water Board's decision, as written, is final.

Approved Unanimously by the BCWCB
Kennewick, Washington
This 11th day of October 2013

Approved and Signed on Behalf of the Water Board By:

Signed



Darryll Olsen, Ph.D., Chairman

Benton County Water Conservancy Board Date Mailed to WADOE Director: on or before 10/24/2013